

Das vs State of Kerala

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Court : Kerala

Decided On : Feb-27-2024

Judge : Honourable Mr.Justice K. Babu

Appeal No. : CRL.A/1447/2009

Appellant : DAS

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU TUESDAY, THE 27TH DAY OF FEBRUARY 2024 / 8TH PHALGUNA, 1945 AGAINST THE ORDER/JUDGMENT SC 468/2006 OF ADDITIONAL DISTRICT COURT (ADHOC), PATHANAMTHITTA CP 10/2006 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,RANNI APPELLANT: DAS S/O RAGHAVAN, UTHIMOOTTIL, GIRIJAN COLONY, MUTTATHUKONAM MURI, ATTATHODU,PERUNAD. BY ADV SRI.V.PHILIP MATHEW RESPONDENT: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. OTHER PRESENT: G SUDHEER,PP THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 27.02.2024, THE COURT ON THE SAME

DAY DELIVERED THE FOLLOWING:

K.BABU, J.

----- CRL.A.No.1447 of 2009

----- Dated this the 27th day of February, 2024

JUDGMENT

Aggrieved by the judgment dated 24.06.2009, passed by the Additional District and Sessions Court, (Adhoc) Fast Track Court-I, Pathanamthitta, in Sessions Case No.468/2006, the accused has preferred this appeal. The appellant/accused was convicted under Section 8(2) of the Abkari Act and sentenced to undergo rigorous imprisonment for a period of one year and pay a fine of Rs.1 Lakh.

2. The prosecution case is that on 14.11.2004, at 8.pm the appellant was found in possession of 7 litres of arrack at Pampa, in violation of the provisions of the Abkari Act.

3. After completing the investigation, final report was submitted against the accused for the offence punishable under

Section 8(2) of the Abkari Act before the jurisdictional magistrate. The case was committed to the Sessions Court, from where it was made over to the trial court. On the appearance of the accused, charge was framed against him for the offence punishable under Section 8(2) of the Abkari Act. The accused pleaded not guilty to the charge, and therefore, he came to be tried by the trial court for the aforesaid offence.

4. The prosecution examined PWs.1 to 5 and proved Exts.P1 to P4 and MOs. 1 to 6.

5. After the closure of prosecution evidence, statement of the accused under Section 313 Cr.P.C. was recorded. He pleaded innocence. The trial court heard the matter under Section 232 Cr.P.C. and found evidence against the accused,

and hence he was called upon to enter on his defence and adduce evidence, if any, he may have in support thereof. After hearing the arguments addressed on both sides, the Trial court convicted the appellant/accused for the aforesaid offence.

6. Heard Sri.V.Philip Mathews, the learned counsel appearing for the appellant/accused and Sri.G.Sudheer, the learned Public Prosecutor appearing for the respondent.

7. The learned counsel for the appellant challenges the

judgment of conviction and sentence on the ground that the

prosecution failed to establish that the contraband seized from the place of occurrence eventually reached the Chemical Examiner's Laboratory.

8. The learned counsel for the appellant relied on the following circumstances to substantiate his contentions:-

i) The delay in the production of the properties including the sample has not been properly explained by the prosecution. ii) Exhibit P1 seizure mahazar does not contain the nature and description of the seal stated to have been affixed on the bottle containing the sample. iii) The specimen of the seal has not been produced before the Court. No material would show that the specimen of the seal was forwarded to the Chemical Examiners Laboratory for verification.

9. The alleged seizure was effected on 14.11.2004.

Exhibit P4 property list shows that the properties including the sample were produced before the court only on 17.11.2004. The delay in the production of properties including the sample has not been properly explained by the prosecution.

10. In Ravi v. State of Kerala [2011 (3) KHC 121] on the question of delay in the production of properties, a Division Bench of this Court held thus: 8. We, therefore,

answer the reference as follows:

1. It is not necessary to produce the article seized

under S.34 of the Abkari Act before the Magistrate 'forthwith' either by virtue of S.102(3) Cr.PC or by virtue of any of the provisions the statute is only that the seizure of the property should be reported forthwith to the Court. But we hasten to add that the production of the property before Court (wherever it is practicable) should also take place without unnecessary delay. There should be explanation for the delay when there is delayed production of the property.

In Ravi's case (supra) the Division Bench held that production of the property before the Court should take place without unnecessary delay and that there should be explanation for the delay when there is delayed production of the property.

11. The detecting officer has prepared seizure mahazar at

the scene of occurrence which is marked as Ext.P1. Ext.P1 seizure mahazar does not contain the nature of the seal stated to have been used by the detecting officer. The detecting officer has also not given evidence as to the specific nature of the seal used by him. No material has been placed before the Court to show that the specimen seal was produced before the Court so as to enable the Court to ascertain the genuineness of the sample produced.

12. In Bhaskaran K. v. State of Kerala and another (2020

KHC 5296), this Court held that the nature of the seal used by the detecting officer shall be mentioned in the seizure mahazar and the specimen of the seal shall be produced in the Court so as to enable the Court to satisfy the genuineness of the sample produced in the court.

13. In Rajamma v. State of Kerala [2014 (1) KLT 506],

this Court held that if the specimen of the seal affixed on the bottle containing the sample is not produced before the court and forwarded to the Chemical Examiner for verification to ensure that the sample seal so provided is tallying with the seal affixed on the sample, no evidentiary value can be attached to the chemical analysis report.

14. Therefore, as the prosecution failed to show that the

contraband allegedly seized from the place of occurrence eventually reached the Chemical Examiners Laboratory, Exhibit P2, Certificate of Chemical Analysis has no evidentiary value.

15. In *Vijay Pandey v. State of U.P* (AIR 2019 SC 3569)

the Apex Court held that mere production of a laboratory report that the sample tested was the contraband substance cannot be conclusive proof by itself and that the sample seized and that tested have to be co-related.

16. It is settled that the prosecution in a case of this

nature can succeed only if it is proved that the sample which was analysed in the Chemical Examiner's laboratory was the very same sample which was drawn from the contraband substance said to have been seized from the possession of the accused {Vide: *State of Rajasthan v. Daulat Ram* [AIR 1980 SC 1314], *Sasidharan v. State of Kerala* [2007 (1) KHC 275]}.

17. In the instant case, the prosecution was unable to

establish the link connecting the accused with the contraband seized and the sample analysed in the laboratory. The accused is entitled to the benefit of doubt arising from the absence of link evidence as discussed above.

18. The upshot of the above discussion is that the conviction and sentence entered by the Court below overlooking

these vital aspects of the matter cannot, therefore, be sustained. In the result, the appellant/accused is acquitted of the offence alleged. He is set at liberty. The

Criminal Appeal is allowed as above. Sd/- K. BABU JUDGE saap

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